

**BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)**

S.A. Nos.61(C) & 85(C) OF 2014-15

(Arising out of order of the learned Additional CST, Northern Zone,
Odisha, Sambalpur in Appeal Case No. AA- 201(C)/2012-13
disposed of on dated 31.03.2014)

Present: Shri R.K. Pattanaik, Chairman,
Smt. S. Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

S.A. No.61(C) OF 2014-15

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack ... Appellant

-Versus-

M/s. Jindal Steel & Power Ltd.,
Tensa, Sundargarh ... Respondent

S.A. No.85(C) OF 2014-15

M/s. Jindal Steel & Power Ltd.,
Tensa, Sundargarh ... Appellant

-Versus-

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack ... Respondent

For the State : Sri S.K. Pradhan, Additional Standing Counsel (CT)
For the Dealer : Sri S.C. Sahoo & Sri A.R. Mishra, Advocates

Date of hearing: 20.10.2020 ***** Date of order: 19.11.2020

ORDER

For effective adjudication and in order to ensure brevity, both the appeals are combinedly taken up and disposed of by the following order for the fact that parties are same and fundamentally common questions of law are involved in the matter.

2. In the instant case, the dealer assessee is a public limited company incorporated under the Companies Act, 1956 with its registered office in the State of Haryana and carries business in the manufacture of iron and steel by having an integrated steel and captive power plant at Angul in Odisha. The dealer assessee also deals with iron ore and export of iron ore fines. It is a registered dealer under the Odisha Value Added Tax Act, 2004 and Odisha Entry Tax Act, 1999 bearing TIN- 21172000530. In fact, according to the dealer assessee, it deals with extraction of iron ores, lumps from its mines at Tensa and crushing it to sized iron ore; also owns a stone crusher at Barbil, where, iron ore lumps purchased locally are crushed; sized iron ores, that apart, are transferred to its branches situated at Raipur in the State of Chhattisgarh otherwise than by way of sale; the iron ore fines which accumulate at the end of the crushing are exported directly by itself and also through exporters and besides that, are sold inside the State; it also effects sale of scrap materials inside Odisha, in course of inter-State trade and commerce and by way of stock transfer to its branches situated outside the State including in engaging and providing machinery and equipments on hire basis.

S.A. No. 61(C) of 2014-15:

3. The appeal is at the behest of the State under Rule 22 of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'the Rules') assailing the impugned order dated 31.03.2014 promulgated in Appeal No. AA- 201(C)/2012-13 by the learned Additional Commissioner of Sales Tax (Appeal), Northern Zone, Odisha, Sambalpur (in short, 'FAA') vis-a-vis assessment order dated 31.03.2012 passed by the learned Deputy Commissioner of Sales Tax, Rourkela-I Circle, Uditnagar (in

short, 'AA') under Rule 12(3) of the Rules for the assessment period 01.04.2007 to 31.03.2011 as against the dealer assessee on the grounds inter alia that some of the findings are not tenable in law and thus, liable to be set aside. According to the State, the FAA did not verify, whether, the wanting declaration form to be in accordance with law or not and without any proper reasoning simply accepted it which is very much apparent from the operative part of the impugned order dated 31.03.2014. It is further contended that the dealer assessee failed to submit 'C' form which it was statutorily obliged to do within a period of three months as per Rule 12(7) of the CST (R&T) Rules, 1957 and furthermore, when Rule 7A of the Rules prescribes that every registered dealer, while filing return, monthly or quarterly, shall furnish to the assessing authority, a declaration as referred to in Rule 12(7) of the CST (R&T) Rules. Since the dealer assessee did not furnish the declaration in Form-C, while claiming concessional rate of tax as per Section 8(1) of the Central Sales Tax Act, 1956 (in short, 'CST Act'), it is further contended that as self assessment return was filed claiming such concession, a duty was cast upon it to furnish the statutory declaration. It is claimed that the dealer assessee, since contravened the provisions of the CST Act, rightly penalty was imposed, but the FAA was also to levy interest which is statutorily mandated in view of the settled position of law as laid down in the case of Indodan Industries Ltd. Vs. State of U.P. reported in (2010) 27 VST 1 (SC). While responding to the claim of the State, the dealer assessee filed a cross-objection and not only supported the deduction vis-a-vis the export sale but also clarified the position with respect to the quantum of inter-State transactions covered against Form-C.

S.A. No. 85(C) of 2014-15:

4. So far as the present appeal is concerned, it is being filed by the dealer assessee principally challenging imposition of penalty as has been upheld and directed by the FAA, while justifying the export sale said to have been carried out in conformity with Section 5(3) of the CST Act. It is contended that the FAA ought not to have levied penalty against the dealer assessee for its failure to furnish the declaration in Form-C for the alleged periods and should have demanded normal rate of tax, instead. It is contended that in spite of best efforts and contacts, the dealer assessee could not receive and furnish Form-C amounting to ₹2,55,38,550/- and such failure on its part was neither deliberate nor intentional. The State filed cross-objection and opposed the contention of the dealer assessee and contended that the impugned order dated 31.03.2014 as to the tax liability and penalty to be absolutely just and as per law.

5. As discussed earlier, the State questioned the acceptability of export sale as it did not qualify in terms of Section 5(3) of the CST Act, especially considering the fact that the FAA failed to examine and verify the documents apart from Form-H furnished in respect thereof for the alleged period 2009-10. The learned Additional Standing Counsel (CT) contended that the aforesaid aspect was not duly considered, rather, ignored despite the fact that the goods in question had been despatched on 04.07.2008 and 05.07.2008 which was prior to the bill raised in favour of the exporter on 18.06.2009. The audit inspection highlighted said fact and indicated that the iron ore fines said to have been despatched on 04.07.2008 and 05.07.2008, whereas, the contract between the

exporter and foreign buyer had taken place on 02.05.2009 and as such, it could not have been considered as a penultimate sale. Admittedly, the FAA accepted the penultimate sale and allowed the deduction in terms of Section 5(3) of the CST Act. Of course, there is no elaborate discussion by the FAA with respect to verification of documents submitted alongside the declaration in Form-H, but as such, no any doubt was entertained vis-a-vis the penultimate sale. It is no doubt true that along with Form-H, certain other documents are required to be furnished by a dealer assessee. In the instant case, as is made to appear, the dealer assessee did furnish Form-H and it was examined and verified by the FAA. The dispute which is raised by the State is to the effect that the FAA did not examine as to if the goods which were passed off as penultimate sale had, in fact, been purchased later to the contract entered in between the exporter and foreign buyer which came into being on 02.05.2009. Indeed, the said aspect was considered by the AA and the explanation which was offered by the dealer assessee to that effect was found satisfactory and accepted. It was contended before the AA that the contract was executed on 02.05.2009 and on the very same day, the exporter placed the order with the dealer assessee to supply iron ore fines and the goods were then sold to the exporter on 18.06.2009 and the bill was raised much after the date of contract and in so far as, the despatch of the iron ore fines is concerned, as per the explanation submitted, a plot stands allotted to them on monthly rental basis by M/s. Calcutta Port Trust, Haldia Dock Complex and the goods are sent by rail from Barsuan Railway siding and accordingly, the goods in question were despatched on 04.07.2008 and

05.07.2008 and stored there until it was sold to the exporter on 18.06.2009. In the considered view of the Tribunal, it is inconsequential as to the despatch of goods at an earlier point of time and since, the contract was executed on 02.05.2009 and much thereafter, the goods were sold and bill was raised i.e. on 18.06.2009, it had to be held as a penultimate sale in terms of Section 5(3) of the CST Act. The AA rightly accepted such an explanation and the circumstances under which the alleged goods had been despatched and retained by the dealer assessee at Haldia till the time sold to the exporter, who received an order on 02.05.2009. The Tribunal does not find any legal infirmity in the findings of the authorities below with regard to such penultimate sale and for that the contention of the State must have to be rejected.

5.1. As regards the quantum of transaction covered under Form-C, it is claimed by the State that the FAA has not mentioned it clearly responding to which the dealer assessee by way of cross-objection clarified that the FAA did mention the quantum for levy of tax at concessional rate which has been arrived at ₹2,93,34,48,666.00. Again, the Tribunal does not find any error being committed by the FAA with respect to the total transaction and the quantum covered under 'C' form. The explanation which has been offered by the dealer assessee clearly clarify the position with respect to the declarations amounting to ₹3,35,84,034.00 and ₹2,55,38,550.00 of M/s. Adhunik Corporation Ltd., Kolkata, and ₹22,59,616.00 of M/s. Jindal Rail Infrastructure Ltd., in total, to the tune of ₹2,93,34,48.666.00.

6. On the point of penalty, the learned Counsel for the dealer assessee has referred to a decision of the Hon'ble Apex Court in the case Hindustan Steel Ltd. Vs. State of Orissa reported in (1970) 25 STC 211 (SC) and other rulings, such as, State of MP Vs. BHEL: (1997) 106 STC 604 (SC) and Thiru Arooran Sugars Ltd. Vs. Assistant Commissioner (CT): (2000) 117 STC 457 (SC) and contended that it was absolutely unjustified on the part of the authority below to levy penalty for failing to submit 'C' form. In Gujarat Ambuja Cement Ltd. and another Vs. Assessing Authority-cum-Assistant Excise & Taxation Commissioner and others reported in (2000) 118 STC 315 (HP), the Hon'ble Court observed that disallowance of a claim for concessional rate of tax on failing to furnish declaration form should not be treated as a violation so as to attract penalty. In fact, it is no more in dispute that a concessional rate of tax may be claimed and accepted subject to furnish of declaration form, but in the event, such form is not submitted even after the stipulated time, it would not invite penalty and the only course that would lie for the assessing authority is to raise demand applying regular rate of tax. Of course, the dealer assessee was required to furnish the declaration in Form-C within three months and ought to have shown the particulars of the transaction, while filing return under Rule 7A of the Rules, but for failing to submit the same even after a considerable length of time would not be a ground sufficient to levy penalty. In that case, the inevitable consequence would be simply to demand the normal rate of tax. In this connection, the learned Additional Standing Counsel (CT) cited a ruling of the Hon'ble Court reported in 1977 Tax LR 1638 (SC) (Mannalal Khetan Vs. Kedar Nath Khetan) and claimed that considering

the ratio as laid down therein and with reference to Section 8(4) of the CST Act and the expression 'shall not' occurring therein, it was right on the part of the FAA to levy penalty. It is made to suggest that the Hon'ble Apex Court in the aforesaid decision as emphasized that such an expression which is negatively couched is always mandatory in nature, the authorities below did correctly levy the penalty, which could not have been dispensed with under law. If the said decision is read, understood and appreciated in its proper perspective, it would rather drive to a conclusion that the Hon'ble Apex Court indeed observed that only and only if declaration form is furnished, a dealer is eligible and entitled to a concessional rate of tax as is envisaged in Section 8(4) of the CST Act and not otherwise. In fact, in the decision *ibid*, the Hon'ble Apex Court, while considering the mandatory or directory nature of a provision with reference to Section 108 of the Companies Act, 1956 observed that such expression 'shall not' carries imperativeness with it. Having regard to the settled law that in case of failing to submit declaration form, a dealer assessee is not to be saddled with penalty, the Tribunal, thus, has to reach at a just conclusion that in the present case, the authorities below unjustifiably levied the penalty, which is, therefore, to be deleted. As to the aspect of interest, since, the FAA allowed it and confirmed the order of the AA on that score, as is evident from the impugned order dated 31.03.2012, no further scope for the Tribunal remains to consider and deal with it and that apart, no case of penal interest is allegedly claimed by the State.

7. Hence, it is ordered.

8. In the result, S.A. No. 61(C) of 2014-15 filed by the State is dismissed. S.A. No. 85(C) of 2014-15 filed by the dealer assessee, however, stands allowed. The cross-objections filed by the respective parties are accordingly disposed of. As a necessary corollary, the impugned order dated 31.03.2014 promulgated in Appeal No. AA- 201(C)/2012-13 is hereby set aside to the extent indicated above. Consequently, the AA is directed to go for recomputation of the tax liability vis-a-vis the dealer assessee for the tax periods as per and in accordance with law and after taking into account the findings and observations of the Tribunal and to complete the entire exercise, if possible, within a period of three months from the date of receipt of the present order.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree,

Sd/-
(Smt. S. Mishra)
2nd Judicial Member

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I